

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JUL 28 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Petition of the Intelligent Transportation Society of America for Amendment of the Commission's Rules To Add Intelligent Transportation Services (ITS) as a New Mobile Service With Co-Primary Status in the 5.850 to 5.925 GHz Band

DOCKET FILE COPY ORIGINAL

RM-9096

To: The Commission

COMMENTS

BellSouth Corporation (“BellSouth”), on behalf of its subsidiaries and affiliates, hereby submits these comments in response to the above-captioned petition for rulemaking filed on May 19, 1997 (“Petition”) by the Intelligent Transportation Society of America (“ITSA”) requesting that the Commission adopt rules to add “Intelligent Transportation Services” (“ITS”) as a new mobile service with co-primary status in the 5.850 to 5.925 GHz Band. *See* DA 97-1106, 62 Fed. Reg. 31,099 (1997).

BellSouth supports the spectrum allocation requested by ITSA as a potential application of wireless technologies that will improve the health and safety of the traveling public. However, BellSouth believes that a certain amount of the spectrum requested should be set aside for commercial mobile service (“CMRS”) offerings, since several of the applications envisioned by ITSA would be commercially-based. Such a set-aside would permit the Commission to propose rules which would ensure that such spectrum is subject to competitive bidding, in fairness to others who have paid for spectrum and would likely be competitors to such commercial offerings.

No. of Copies rec'd 044
List ABOVE ET

BellSouth also urges the Commission to adopt a *Notice of Proposed Rulemaking* to seek comment on various additional issues not addressed in the petition.

I. BELLSOUTH SUPPORTS THE REQUESTED SPECTRUM ALLOCATION TO MEET THE NEEDS OF THE PUBLIC SAFETY COMMUNITY

ITSA requests the allocation of the 5.850 to 5.925 MHz band on a co-primary basis with the government radiolocation and fixed-satellite services to accommodate the current and planned mobile services collectively referred to as ITS. In its Petition, ITSA demonstrates the public safety benefits of establishing a uniform, nationwide spectrum platform for ITS. ITSA cites many examples of the current and potential applications of ITS, all of which are designed to improve safety and efficiency of vehicle-based travel.

BellSouth supports ITSA's proposal to the extent it is consistent with BellSouth's prior positions on spectrum allocations for public safety uses.¹ The proper forum to address ITSA's proposal is a *Notice of Proposed Rulemaking* where ITSA bears the burden of showing that spectrum allocation will be narrowly tailored to public safety uses. BellSouth agrees with ITSA's proposal to allocate a contiguous block of spectrum which would have sufficient capacity and bandwidth to accommodate the contemplated public safety applications, rather than addressing the communications needs of public safety and emergency personnel on a piecemeal basis. Such an approach is consistent with the Commission's ongoing proceeding to evaluate the communications needs of public safety agencies.²

¹ See, e.g., Comments of BellSouth on the National Communications System Petition for Rule Making (WT Docket No. 96-86, filed June 17, 1996).

² *The Development of Operational, Technical, and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010*, WT Docket No. 96-86, *Notice of Proposed Rule Making*, FCC 96-155 (released Apr. 10,

II. SPECTRUM FOR COMMERCIAL USE SHOULD BE SET ASIDE AND ALLOWED TO DEVELOP IN THE COMPETITIVE MARKET

BellSouth believes ITSA's proposal should be taken one step further, however, to set aside a portion of the spectrum for CMRS use. Although some of the services being developed are intended for primarily government activities, ITSA recognizes that "[s]ome services are being deployed within the private sector as consumer products."³ BellSouth believes that such consumer-oriented, commercial ITS services should be restricted to portions of the proposed allocation reserved for CMRS in order to facilitate the administration of competitive bidding. Commercial entities wishing to participate in these opportunities should be required to obtain their spectrum in the same manner that others have by successfully bidding for licenses.⁴ Otherwise, such entities would receive a windfall by obtaining for free spectrum for which potential competitors had to pay.⁵

III. THE COMMISSION SHOULD ESTABLISH A NOTICE OF PROPOSED RULEMAKING TO ADDRESS ISSUES NOT RAISED IN THE PETITION

In light of the concerns regarding CMRS uses of the proposed spectrum allocation, and the need to seek further comment on the additional issues discussed below, BellSouth urges the

1996).

³ Petition at 10.

⁴ See, e.g., *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532 (1994) (adopting rules to conduct auctions for the provision of broadband personal communications services); *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS")*, GN Docket No. 96-228, *Report and Order*, FCC 97-50 (1997).

⁵ The Petition also stated that other services "involve joint public-private deployment efforts." Petition at 10. To the extent that a combined governmental/commercial service is offered, BellSouth suggests that the Commission solicit comment on what types of services would be offered, and how to treat the licensing of such services for competitive bidding purposes.

Commission to adopt a *Notice of Proposed Rulemaking* pursuant to Section 1.407 of the Commission's Rules.⁶

A. Comment Should Be Sought on the Need to Allocate the Entire Amount of Spectrum (75 MHz) Requested By ITSA

In its Petition, ITSA explained the need for eight six-MHz channels, in order to implement the full range of ITS applications.⁷ However, because ITSA proposed co-primary status for ITS with existing licensed services operating in the band, and in order to support other Dedicated Short Range Communications ("DSRC") technologies, ITSA suggested that a total of 75 MHz, rather than 48 MHz, be allocated to ITS.⁸

The methodology relied upon by ITSA to reach 75 MHz was not fully explained in the Petition, thus it cannot be determined on the existing record whether this is a reasonable allocation. Accordingly, the Commission should solicit comment on the most efficient amount of spectrum that should be allocated for ITS. This will depend, for example, on the level of interest by both government and entrepreneurial entities, and the anticipated development and availability of equipment for ITS use. By requesting comment on this issue, the Commission will obtain a more complete record in this proceeding in order to determine the amount of spectrum required.

B. It Cannot Be Determined Whether the Petition Accounted for Existing and Planned Services in the Competitive Market

Since the ITSA plan proposes operations on a co-primary basis with existing services, the Petition addressed interference concerns with respect to these services, which include government

⁶ 47 C.F.R. § 1.407.

⁷ Petition at 37-39.

⁸ Petition at 40.

radiolocation, fixed satellite service uplinks, Industrial, Scientific and Medical (“ISM”) devices, amateur radio operators, and unlicensed Part 15 devices.⁹ ITSA should shoulder the burden of showing that so such interference concerns exist. To the extent interference does exist, ITSA should be dealt with pursuant to the Emerging Technologies guidelines (*i.e.*, relocation). The Petition also recognizes that the proposed ITS operations, as a second generation DSRC architecture, would supplement services currently offered in the Location and Monitoring Service.¹⁰ Although ITSA noted that CMRS carriers are increasingly providing ITS,¹¹ the Petition did not address the impact that the proposal may have on existing competitive services that are used for public safety purposes.

To the extent that existing commercial licenses, such as PCS and WCS, have been granted pursuant to competitive bidding, the impact on the holders of such licenses by the introduction of a new service which could devalue their spectrum needs to be examined. Thus, the Commission should solicit comment from the community of service providers who bid and paid for licenses regarding the potential impact of ITSA’s proposal on their operations.

C. The Proposed Band Needs to Be Separately Allocated Between Governmental and Commercial Uses

As discussed above, to the extent that competitive, commercial ITS would be offered, the spectrum allocated for ITS use would have to be segregated in order for the Commission to apply competitive bidding procedures to award channels exclusively for CMRS offerings. In the interests of regulatory parity, commercial entities who intend to offer consumer oriented ITS cannot be permitted to obtain spectrum and compete with existing competitive service licensees without

⁹ Petition at 39.

¹⁰ Petition at ii.

¹¹ Petition at 9.

having paid for it.¹² Otherwise, existing service providers who purchased spectrum at auction for competing CMRS services would be placed at an extreme and unfair disadvantage. BellSouth recognizes that governmental entities should not be required to use limited public funds to participate in an auction to use spectrum for public safety purposes.¹³ Thus, the Commission should solicit comment on how the proposed spectrum can properly be allocated between government and commercial entities in order to apply separate licensing schemes.

In this regard, the Commission should also request comment on whether it would be useful to channelize the spectrum based on the type of service being offered. ITSA identified various "user services," "bundles," and "installation groups" of services,¹⁴ and such service-specific frequency allocations may be useful for equipment development as well as for classification for purposes of competitive bidding. Further, to the extent that co-channel and adjacent channel interference issues cannot be resolved, and clearing of spectrum held by incumbents is contemplated, BellSouth also

¹² See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 6002, 107 Stat. 312, 392 (1993); H.R. Rep. No. 103-111 (1993), *reprinted in* 1993 U.S.C.C.A.N. 378, 586-89 (addressing regulatory parity in the classification of the mobile services); *Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, *Second Report and Order*, 9 FCC Rcd 1411, 1418 (1994) (the Commission is obligated to ensure that similar services are subject to consistent regulatory classification). Some examples cited in the Petition of commercial ITS services include parking payment, drive-through services payment, rental car inventory and payment services, freight mobility user services, automatic equipment monitoring, fleet management, traffic reporting, and hand-held devices providing a variety of traveler information, including bus schedules, directories of business listings and tourist attractions. Petition at 13, 26-28, 30, Exhibit B p. I-7.

¹³ Private entities who exclusively perform essential public safety functions for public safety organizations would also fall into this category. See Petition at 35.

¹⁴ Petition at 9, 38.

recommends that the spectrum be cleared of incumbents using the procedures adopted in the Emerging Technology docket.¹⁵

D. The Commission Also Needs to Solicit Comment on Miscellaneous Commercial Service-Related Issues

To the extent that commercial ITS services are offered to subscribers, the Commission should issue a *Notice of Proposed Rulemaking* which requests comment on the following issues:

- Will companies bid and pay for the bandwidth based on the amount received or on an “all or nothing” basis?
- What safeguards will be established to address resale of the spectrum?
- How will bidders demonstrate their capability to deliver on system build-out?
- How will safeguards on interference concerns between co-channel users, such as mitigation techniques,¹⁶ be adequately addressed?

¹⁵ *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*, ET Docket No. 92-9, *First Report and Order and Third Notice of Proposed Rule Making*, 7 FCC Rcd 6886 (1992); *Third Report and Order and Memorandum Opinion and Order*, 8 FCC Rcd 6589 (1993).

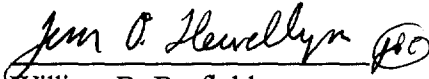
¹⁶ Petition at 47.

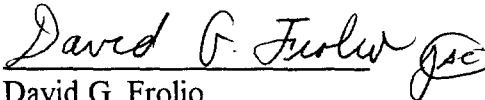
CONCLUSION

For the foregoing reasons, BellSouth supports the issuance of a *Notice of Proposed Rulemaking* to address the ITSA Petition and the issues discussed above.

Respectfully submitted,

BELLSOUTH CORPORATION

By: 
William B. Barfield
Jim O. Llewellyn
1155 Peachtree Street, NE, Suite 1800
Atlanta, GA 30309-2641
(404) 249-4445

By: 
David G. Frolio
1133 21st Street, N.W.
Washington, DC 20036
(202) 463-4182

Its Attorneys

July 28, 1997

CERTIFICATE OF SERVICE

I, Jeffrey S. Cohen, do hereby certify that copies of the foregoing "Comments" in RM-9096 were served by hand delivery on this 28th day of July 1997, to the persons listed below:

Robert B. Kelly
Douglas L. Povich
Katherine S. Poole
Kelly & Povich, P.C.
Suite 300
1101 30th Street, N.W.
Washington, D.C. 20007

A handwritten signature in black ink, appearing to read "Jeffrey S. Cohen", written over a horizontal line.

Jeffrey S. Cohen